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HARRISBURG, PA

FEB 18 2003

MARY E. O'ANDREA CLERK
Per [Signature] Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VINCENZO MAZZAMUTO,
Plaintiff,

v.

UNUM PROVIDENT CORPORATION;
PAUL REVERE LIFE INSURANCE
COMPANY; and NEW YORK LIFE
INSURANCE COMPANY
Defendants

CIVIL ACTION – LAW

NO. 1:CV-01-1157

JUDGE CONNER

JURY TRIAL DEMANDED

PLAINTIFF'S PETITION TO FILE AMENDED COMPLAINT

Plaintiff, by his attorney, Richard C. Angino, requests Your Court's permission to file an amended complaint for the following reasons:

1. The Complaint was filed on June 26, 2001. **Exhibit A.**
2. Plaintiff's Complaint averred a chronology commencing July 22, 2000, and concluding with Defendants' denial of Mr. Mazzamuto's claim on or about April 20, 2001.
3. Since April 20, 2001, Defendants have persisted in their denial of Plaintiff's claim despite Defendants' receipt of the following information:

5/8/01 – Mr. Angino wrote a letter to Defendants summarizing Mr. Mazzamuto's claim and suggesting that Defendants would be guilty of bad faith if they did not pay the claim on the basis of the existing record.

7/12/01 – Dr. Schneider submitted report for Social Security Administration

4/16/02 – Defendants took Dr. Bowers' deposition

6/13/02 – Plaintiff filed first expert report

6/14/02 – Defendant New York Life agreed Mr. Mazzamuto was totally disabled as to his life insurance premium payments

6/27/02 – Defendant Dr. Steinman submitted an expert report without ever examining the patient opining from the records that Mr. Mazzamuto could do his work with accommodations

6/28/02 – Defendant Dr. Hostetter submitted a report to the effect that he could not express an opinion as to Mr. Mazzamuto's claim of disability from emotional causes

7/11/02 – Plaintiff filed a second expert report

7/25/02 – Mr. Mazzamuto was found to be totally disabled by the Social Security Administration

8/15/02 – Defendant New York Life reconfirmed that Mr. Mazzamuto was totally disabled and need not pay his life insurance premium

8/22/02 – Plaintiff's counsel filed the first of various articles, depositions, opinions from courts to the effect that UNUM/Provident had been engaging in unfair insurance practices for a number of years with respect to disability specific occupation policies which UNUM/Provident had found to be unprofitable

10/29/02 – Plaintiff's counsel supplied Defendants' counsel with a copy of a "day in the life" film of Mr. Mazzamuto

11/25/02 – Plaintiff filed a Motion to Add Additional Authority and a Motion to Supplement the Record. Plaintiff's Motion to add additional authority referenced relevant cases against UNUM/Provident. Plaintiff's Motion to Supplement

Record sought to add an additional report from Plaintiff's expert dated November 19, 2002, as well as two depositions of Dr. William Feist, a prior employee of Defendant UNUM/Provident.

12/5/02 – Plaintiff filed a Second Motion to Supplement the Record to add an additional report dated December 4, 2002, from Plaintiff's expert Gordon K. Rose

12/23/02 – Plaintiff's counsel filed an Affidavit

1/27/03 – Plaintiff's counsel responded to Defendants' Motion to Strike Affidavit and Plaintiff's Memo of Law opposing Defendants' Motion to Strike

2/12/03 – Plaintiff's counsel filed a Motion to Add Authority to Summary Judgment Motions

2/12/03 – Plaintiff's counsel supplied defense counsel with up-to-date medical records from Dr. Bower and the Pain Management Clinic

2/12/03 – Sent updated medical records to defense counsel

4. Plaintiff contends that Defendants are guilty of bad faith for the way they handled Mr. Mazzamuto's claim from July, 2000 to the present, as well as engaging in a course of practice whereby (a) they utilized in-house employee reviewers, (b) the reviewers were motivated to deny large claims and particularly occupation specific disability policies, (c) Defendants taught their employees to reference Plaintiff's application job description rather than the specific requirements of his actual job, (d) Defendants specifically declined and/or failed to consider Plaintiff's actual occupational activities, (e) Defendants failed to follow the company manual of seeking independent medical examinations, (f) Defendants declined Plaintiff's claim on the basis of in-house office review rather than an independent medical examination, (g) Defendants persisted in declining Plaintiff's claim despite a finding of total disability by the Social Security Administration with a more demanding definition of "total disability," as well as

Defendant New York Life, with respect to Plaintiff's life insurance policy with a similar definition of "total disability" and in the face of court decisions and jury awards in similar cases finding Defendants guilty of bad faith and unfair insurance practice actions and after juries had imposed millions of dollars and Defendants were ordered to cease and desist in their unfair insurance practices.

5. Defendants have been advised and are well aware of all of the proposed amended facts and Plaintiff's legal position with respect to the additional Amended Complaint factual allegations and have had many months to prepare to defend same.

6. As a direct and proximate result of Defendants' bad faith conduct, Mr. Mazzamuto has been damaged and is entitled to recover his damages, including the underlying disability claim, interest on his claim, attorney's fees and costs, and punitive damages pursuant to 42 Pa.C.S.A. §8371.

WHEREFORE, Plaintiff requests Your Honorable Court's grant of an order permitting the filing of an Amended Complaint adding the factual history that has developed since the time of the filing of the original Complaint and Plaintiff's reliance upon these additional facts in support of his contractual and bad faith claims. Plaintiff's suggested Amended Complaint is attached as **Exhibit B**. A black-lined copy of the Amended Complaint is attached as **Exhibit C**.

Respectfully submitted,

ANGINO & ROVNER, P.C.


Richard C. Angino, Esquire

I.D. No. 07140

Joan L. Stehulak, Esquire

I.D. No. 29496

4503 N. Front Street

Harrisburg, PA 17110

(717) 238-6791

Attorney for Plaintiff

Dated: 2/19/03

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VINCENZO MAZZAMUTO,
Plaintiff,

v.

UNUM PROVIDENT CORPORATION;
PAUL REVERE LIFE INSURANCE
COMPANY; and NEW YORK LIFE
INSURANCE COMPANY
Defendants

CIVIL ACTION – LAW

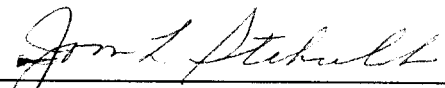
NO. 1:CV-01-1157

JUDGE CONNER

JURY TRIAL DEMANDED

CERTIFICATE OF CONCURRENCE/NONCONCURRENCE

On February 12, 2003, I Joan L. Stehulak, contacted Thomas Henefer, counsel for Defendants, seeking concurrence/nonconcurrence in the foregoing Petition. Counsel does not concur.


Joan L. Stehulak

Exh A

1 : CV - 01 - 1157

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VINCENZO MAZZAMUTO,
Plaintiff,

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UNUM PROVIDENT CORPORATION;
PAUL REVERE LIFE INSURANCE
COMPANY; and NEW YORK LIFE
INSURANCE COMPANY
Defendants

CIVIL ACTION - LAW

NO.

JUDGE:

JURY TRIAL DEMANDED
Per MARY E. D'ANDREA, CLERK
DEPUTY CLERK

FILED
HARRISBURG

JUN 26 2001

COMPLAINT

1. Plaintiff Vincenzo "Vincent" Mazzamuto is an adult individual residing at 501 Limestone Road, Carlisle, Cumberland County, Pennsylvania.
2. Defendant UNUM Provident Corporation (hereinafter "UNUM") is an insurance company with its principal place of business in Worcester, Massachusetts.
3. Defendant Paul Revere Insurance Company (hereinafter "Paul Revere") is an insurance company with a principal place of business in Worcester, Massachusetts.
4. Defendant New York Life Insurance Company (hereinafter "New York Life") is an insurance company with a principal place of business in New York, New York.

5. It is believed by Plaintiff and, therefore, averred that Paul Revere is a subsidiary of UNUM and that Paul Revere is the administrator for New York Life.

6. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §1332.

7. Venue in the Middle District of Pennsylvania is proper because Defendants are licensed to do business in the Commonwealth of Pennsylvania and regularly conduct business in the Middle District.

8. Plaintiff Mr. Mazzamuto is a long-time policyholder with Defendant New York Life with disability insurance policies for his position as owner/president of Vinny's Restaurant dating back to the early 1990's.

9. Specifically, Mr. Mazzamuto was and is an insured under disability policy number H3236167 issued by Defendant New York Life. A copy of policy number H3236167 is attached as **Exhibit A**.

10. In exchange for Mr. Mazzamuto's annual premiums, the before mentioned policy provided for the payment of monthly benefits during times of disability when Mr. Mazzamuto was incapable of performing his duties as owner/president of Vinny's Pizzeria:

Total Disability. From the start of a total disability until two years after the Income Starting Date, disability means the that the Insured can not do the substantial and material duties of his or her regular job and is not working at any other gainful job.

The cause of the total disability must be an injury or a sickness.

* * *

Residual Disability. Residual Disability under the terms of Plaintiff's Policy is satisfied when, during the elimination period, as a result of an injury or sickness, the insured:

- a. is not able to do one or more of the substantial and material duties of his or her regular job; or

- b. directly and apart from any other cause, has a loss of income of at least 20%.

11. In and around July 22, 2000, Plaintiff Vincent Mazzamuto suffered a heart attack.

12. At that time, while being transported to the emergency room for physician care, Vincent Mazzamuto aggravated a pre-existing back injury. Because of his resulting lower back pain, Mr. Mazzamuto is not able to bend or stand for prolonged periods of time.

13. As a result of his heart attack, Mr. Mazzamuto underwent cardiac catheterization and cardiac rehabilitation.

14. As a result of his aggravated lower back problems, Mr. Mazzamuto continues to receive continuous medical care and treatment.

15. As a result of Mr. Mazzamuto's heart condition and subsequent lower back problems, as noted by his treating physician, Douglas J. Bower, M.D., in the Attending Physician's Statement submitted to Paul Revere/New York Life, Mr. Mazzamuto required disability because of his inability to cope with the stressful atmosphere of work, perform heavy lifting and withstand the long periods of standing required by Mr. Mazzamuto's profession as owner/president of Vinny's Restaurant.

16. After providing verbal notice to UNUM/Paul Revere/New York Life of his disability claim, in or around November of 2000, Mr. Mazzamuto filed his disability claim with UNUM/Paul Revere/New York Life.

17. In or around November of 2000, Mr. Mazzamuto's treating physician, Douglas J. Bower, M.D., submitted a letter to UNUM/Paul Revere/New York Life to clarify facts about Plaintiff's condition because the physician found the medical forms provided by Defendants to be insufficient to properly describe Mr. Mazzamuto's several medical problems. Within his letter Dr. Bowers clearly describes Mr. Mazzamuto's heart condition and subsequent back

problems resulting from his July 22, 2000, admittance into the hospital. Dr. Bowers noted that "it is unlikely [Mr. Mazzamuto] will be able to return to work in the foreseeable future" as a result of his cardiac problems which manifest with the significant anxiety that he experiences while at work as well as the before mentioned back problems.

18. Within his Statement of Occupational Duties and Employment form submitted by Mr. Mazzamuto to New York Life in or around November of 2000, he noted that his work activities require 4.5 hours of walking and standing. Furthermore, Mr. Mazzamuto noted in an Occupational Description form submitted to New York Life in or about January of 2001, that his job required him to stand most of the time which aggravated his lower back condition and that his job was stressful which caused chest pain and shortness of breath and aggravated his lower back condition.

19. Approximately six months after Mr. Mazzamuto submitted his disability claim, and after several letters from his counsel in or about March of 2001, demanding a decision on the status of his claim, Defendant UNUM/Paul Revere/New York Life denied Mr. Mazzamuto's claim on or about April 20, 2001. During the six month interlude, Plaintiff was utterly confused and discouraged by the claims handling process in which delays were caused by 1) requests for Plaintiff to provide medical documentation and statements concerning both his back and heart conditions; 2) numerous phone interviews and discussions with claims handlers; and 3) requests by several of Defendant's different departments for various job description forms and monthly progress reports. Many of Defendants' requests during this six-month period resulted in Mr. Mazzamuto providing duplicative information.

20. Defendants' handling of Mr. Mazzamuto's claim for total disability was in bad faith because Defendants had no reasonable basis for denying Mr. Mazzamuto the benefits under

his disability policy, and Defendants knew of and/or recklessly disregarded its lack of a reasonable basis in denying Plaintiff's claim.

21. As a direct and proximate result of Defendants' bad faith conduct, Mr. Mazzamuto has been damaged and is entitled to recover his damages, including the underlying disability claim, interest on his claim, attorney's fees and costs, and punitive damages pursuant to 42 Pa.C.S.A. §8371.

WHEREFORE, Plaintiff demands judgment against Defendant in excess of \$150,000, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

ANGINO & ROVNER, P.C.

Richard C. Angino, Esquire
I.D. No. 07140
James DeCinti, Esquire
I.D. No. 77421
4503 N. Front Street
Harrisburg, PA 17110
(717) 238-6791
Attorneys for Plaintiff

Dated: 6/26/01

INSURED:	VINCENZO MAZZAMUTO
POLICY NUMBER:	H3 236 167
POLICY DATE:	JUNE 28, 1993

Disability Income Policy

New York Life Insurance Company will pay the benefits of this policy in accordance with its provisions. The pages which follow, including any exceptions and limitations, are also a part of this policy.

10 day free examination period. Please examine this policy. Within 10 days after delivery, the policy can be returned to the Company or to the agent through whom it was purchased, with a written request for a full refund of premium. Upon such a request, the policy will be void from the start, and any premium paid will be refunded.

Pre-existing condition limitations. Benefits for a disability caused by a pre-existing condition, as defined in this policy, will not be provided unless the disability starts after the policy has been in force for 2 years.

However, if a condition is excluded from coverage by name or specific description, no benefits will be provided for a loss that results from that condition even after these 2 years.

Renewability. This policy is non-cancellable and guaranteed renewable to the policy anniversary nearest the Insured's 65th birthday as stated in the Right to Renew Policy section.

After that anniversary, the policy may be renewed as long as the Insured is gainfully employed full time. During this time, the Company can change the table of premium rates that applies to this policy. See the Right to Renew Policy section for details.

Important notice concerning statements in the application for this insurance. Please read the copy of the application attached to this policy. Omissions or misstatements in the application could cause an otherwise valid claim to be denied or the policy to be rescinded, subject to the Incontestability provision of this policy. Carefully check the application and write to the Company within 10 days after delivery if any information shown is not correct and complete. The application is part of this insurance policy and this insurance policy was issued on the basis that the answers to all questions and any other material information shown are correct and complete.

This policy is executed as of 12:01 A.M. on the policy date.

Coverage ends as of 11:59 P.M. on the last date this policy is in effect. These times are based on the Insured's place of residence.

Disability Income Policy

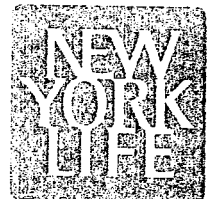
Non-Cancellable and Guaranteed Renewable
to Age 65 - No Increase in Premium Rates

Conditionally Renewable From Age 65 For Life
Subject to Change in Premium Rates

This is a participating policy.

George W. Burchinal
President

Alice T. Kane
Secretary



INSURED	VINCENZO MAZZAMUTO	AGE	38
POLICY NUMBER	H3 236 167		
POLICY DATE	JUNE 28, 1993		
OWNER	INSURED		

BENEFITS

PRIMARY MONTHLY INCOME BENEFIT FOR TOTAL DISABILITY: \$2,000
(IF TOTAL DISABILITY STARTS AT/AFTER AGE 75, ONE-HALF OF BENEFIT PAYABLE BEFORE AGE 75)

ELIMINATION PERIOD: 180 DAYS OF DISABILITY - AS DESCRIBED IN THIS POLICY

MAXIMUM BENEFIT TERM: TO AGE 65 OR 2 YEARS, WHICHEVER IS LONGER; ONE YEAR, IF TOTAL DISABILITY STARTS AT OR AFTER AGE 75.

SUPPLEMENTARY BENEFITS:

COST OF LIVING BENEFIT (COLB) 5%

RESIDUAL DISABILITY

PRIMARY AUTOMATIC BENEFIT INCREASE (PABI)**

INCOME PURCHASE OPTION (IPO) UNITS 3

** REFER TO THE SCHEDULE FOR AUTOMATIC BENEFIT INCREASE

**SCHEDULE
FOR
PRIMARY AUTOMATIC BENEFIT INCREASE**

INSURED: VINCENZO MAZZAMUTO

POLICY NUMBER: H3 236 167

\$ 100 WILL BE AUTOMATICALLY ADDED TO YOUR PRIMARY MONTHLY INCOME BENEFIT AMOUNT WITHOUT EVIDENCE OF INSURABILITY. THIS WILL BE DONE ON EACH EFFECTIVE DATE OF INCREASE.

THESE INCREASES ARE SUBJECT TO THE TIMELY PAYMENT OF THE PROPER PREMIUM. THESE PREMIUMS ARE BASED UPON YOUR ATTAINED AGE ON THE EFFECTIVE DATE OF INCREASE. THEY ARE LISTED BELOW. IF ALL INCREASES GO INTO EFFECT, YOUR MONTHLY PREMIUM WILL INCREASE BY \$39.42

<u>EFFECTIVE DATE OF INCREASE</u>	<u>MONTHLY PREMIUM INCREASE</u>
06-28-1994	\$7.36
06-28-1995	\$7.64
06-28-1996	\$7.89
06-28-1997	\$8.14
06-28-1998	\$8.39

A BENEFIT INCREASE WILL APPLY ONLY TO A DISABILITY WHICH STARTS AFTER THE EFFECTIVE DATE OF INCREASE. IT WILL NOT APPLY TO A CONTINUATION OF A PRIOR DISABILITY. IF THE PREMIUM FOR THE POLICY IS BEING WAIVED ON THE EFFECTIVE DATE OF INCREASE, THE PREMIUM FOR THE INCREASE WILL ALSO BE WAIVED. WHEN YOU RESUME PAYING PREMIUMS FOR THE POLICY, YOU MUST ALSO START PAYING THE PREMIUM FOR THE INCREASE.

YOU MAY REFUSE AN INCREASE BY NOTIFYING US IN WRITING 45 DAYS PRIOR TO THE EFFECTIVE DATE OF INCREASE. YOUR REFUSAL OF AN INCREASE WILL NOT AFFECT THE REMAINING AUTOMATIC BENEFIT INCREASES.

PRIOR TO AGE 60, YOU MAY APPLY FOR ADDITIONAL AUTOMATIC BENEFIT INCREASES. YOU CAN DO THIS BY MAKING FORMAL APPLICATION WITHIN THE PERIOD OF 60 DAYS PRIOR TO AND 31 DAYS AFTER THE LAST EFFECTIVE DATE OF INCREASE SHOWN ABOVE. APPROVAL WILL BE SUBJECT TO OUR UNDERWRITING GUIDELINES IN EFFECT AT THE TIME OF THE APPLICATION FOR RENEWAL.

In this policy, the words "we", "our" or "us" refer to New York Life Insurance Company and the words "you" or "your" refer to the Owner of this policy.

When writing to us, please include the Insured's full name, current address, and the policy number.

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DEFINITIONS (continued)

(3) a Custodial Care Facility which:

- (a) provides custodial care under the supervision of a Registered Nurse (R.N.); and
- (b) can accommodate three or more persons.

The facility must be licensed and operated according to the law of the jurisdiction in which it is located.

A Nursing Care Facility is not:

- (1) an acute care unit of a hospital;
- (2) any place operated primarily to treat mental illness, chemical dependency or alcoholism;
- (3) an educative or rehabilitative facility;
- (4) a facility owned or operated by a member of the Insured's or the Owner's immediate family.

Physician A licensed practitioner of the healing arts acting within the scope of his or her license in treating an injury or a sickness. The following are not physicians for the purpose of this policy: the Owner of this policy; the Insured; a member of the Owner's or the Insured's family (spouse, natural or adopted child, mother, father, sister or brother); a member of the Owner's or the Insured's business; any employee of the Owner or the Insured.

Pre-existing Condition A bodily injury or sickness of the Insured which a Physician has treated or for which a Physician has advised treatment within 2 years before the policy date. A condition which was fully disclosed in the application but not excluded from coverage is not considered to be a pre-existing condition. However, a normal pregnancy which began before the effective date of this policy is considered to be a pre-existing condition whether or not it was fully disclosed in the application.

Regular Job The occupation, or occupations if more than one, in which the Insured is engaged when a disability starts.

Total Disability From the start of a total disability until 2 years after the Income Starting Date, total disability means that the Insured can not do the substantial and material duties of his or her regular job.

After 2 years from the Income Starting Date, if a new period of disability does not apply, total disability will then mean that the Insured can not do the substantial and material duties of his or her regular job and is not working at any other gainful job.

The cause of the total disability must be an injury or a sickness.

Total disability also means the Insured's total loss of one or more of the following, without regard to the Insured's ability to work:

- (a) the sight of both eyes;
- (b) the use of both hands, both feet, or one hand and one foot;
- (c) speech;
- (d) hearing in both ears.

BENEFITS

Benefits for Disability This policy provides monthly income benefits for disability. When the term "disability" is used alone, it means total disability, as defined in this policy.

Monthly Income Benefit for Total Disability This benefit becomes payable as follows: premiums must be paid as called for in the Premiums section and the Elimination Period must be satisfied.

Then, beginning with the Income Starting Date and while disability goes on continuously, we will pay the Monthly Income Benefit for Total Disability, for each full month of total disability. The benefit is payable at monthly intervals during the benefit term. If the Insured is totally disabled for part of a month, we will pay 1/30th of the monthly benefit for each day of total disability. The amount of the monthly income benefit will not change if total disability results from more than one cause. In no event will the Insured be considered to have more than one disability at the same time.

The Monthly Income Benefit for Total Disability is shown on the Data page. For a total disability which starts at or after age 75, the Monthly Income Benefit for Total Disability will be 1/2 of the amount shown on the Data page.

New Period of Disability If the Insured recovers from a disability for which monthly income benefits were paid, any later period of disability will be treated as a new period of disability when at least one of the following conditions is met while this policy is in force. First, the cause of the later period of disability must not be related in any way to the cause of any prior period of disability. Second, for at least 6 months in a row after recovery, the Insured must have worked full time at a gainful job. There must not have been any disability for which a benefit was payable during this 6 month period. A new Maximum Benefit Term and a new Elimination Period will apply to each new period of disability.

It may happen that neither of these conditions is met. In this case, if the later period of disability begins while this policy is in force, it will be a part of and an extension of the prior period of disability, with no new Elimination Period and no new Maximum Benefit Term.

Nursing Facility Benefit We will pay an additional benefit for a period during which the Insured is confined in a Nursing Care Facility during a benefit term for total disability. The additional benefit for a period of confinement is 50% of the Monthly Income Benefit for Total Disability we pay for the same period. The confinement must be:

- (1) prescribed by the Insured's Physician; and
- (2) for a period of at least 24 consecutive hours.

The additional monthly benefit will not be payable beyond the end of the benefit term.

Waiver of Premium Benefit We will start to waive the premiums for this policy when the Elimination Period has been satisfied and all premiums have been paid. We will waive those premiums that fall due on or after that Income Starting Date and during that disability until age 65 or until the end of the Maximum Benefit Term, whichever is later. We will also waive premiums which become due during the 3 months after the disability ends, but only if they fall due before age 65.

We will refund any premium which was paid and which fell due on a day of disability used to satisfy the Elimination Period.

Premiums will be waived based on the interval of payment which is in effect when the period of disability starts. A premium which is waived will not be deducted from any monthly income benefits or other proceeds.

CLAIMS

Notice of Claim A written notice of claim must be given to us at our Home Office, New York Life Insurance Company, 51 Madison Avenue, New York, NY 10010, or to one of our authorized agents. The notice must be given within 30 days after a disability starts or a covered loss occurs, or as soon as this can reasonably be done. It must include the name of the Insured and the policy number.

Claim Forms When the notice is received, claim forms will be sent to the claimant to be filled out and returned to us. If the claimant does not receive these forms within 15 days after giving a notice of claim, he or she may instead give a complete written account of the facts that we need.

Proof of Disability or Loss This policy provides for periodic payment for a continuing disability. You must give us written proof of disability within 90 days after the end of each period for which a benefit is payable. For any other loss, written proof must be given within 90 days after such loss occurs. Failure to give the proof within that time is not a basis for us to reduce or deny the claim, if the following 3 conditions are met. First, it must not be reasonably possible to give the proof within that time. Second, the proof must be given as soon as reasonably possible. Third, the proof must be given within one year from the time that proof is otherwise required, except in the absence of legal capacity.

Time of Payment of Claim A claim will be payable when all information that is necessary for us to make a decision is received.

Payment of Claim While the Insured is living, any benefits will be payable to you. If any of these benefits have not been paid at the Insured's death, they will be paid to you or to your estate.

A claim may become payable to your estate or to someone who can not give a valid release. In this case, up to \$1,000 of that claim may be paid to the person whom we decide has the right to receive it. This person must be related by blood or marriage to you or to the person who could not give the release. Any payment made in good faith to that relative will release us to that extent.

Examination of the Insured While a claim under this policy goes on, we have the right to have the Insured examined, at our expense, by physicians approved by us, as often as reasonably required.

Legal Actions With respect to any claim under this policy, no legal action may be taken against us during the 60 days after receipt of the written proof, or after 3 years from the date proof is required to be given.

RIDER

PRIMARY AUTOMATIC BENEFIT INCREASE (PABI)

Benefit The Primary Automatic Benefit Increase (PABI) provides for automatic increases to the Primary Monthly Income Benefit Amount for Total Disability, subject to the provisions of this rider. The amount shown on the Data page will be automatically added without evidence of insurability. This will be done on each Effective Date of Increase shown on the Data page.

A benefit increase will apply only to a disability which starts after the Effective Date of Increase. It will not apply to a continuation of a prior disability.

Premiums Premiums for the Automatic Benefit Increases must be paid as called for in the Premiums section of the policy and are shown as Premium Increases on the Data page. Premiums are based upon the Insured's attained age on the Effective Date of Increase. If all increases go into effect, the premium will increase by the amount shown on the Data page.

If we are waiving premiums for the policy on the Effective Date of Increase, then the premium for the increase will also be waived. When premium payments for the policy resume, then the premium for the increase must also be paid.

Refusal You may refuse any increase prior to the Effective Date of Increase. To do this, your signed notice must be sent to us 45 days prior to the Effective Date of Increase. Your refusal of an increase will not affect the remaining automatic benefit increases.

Renewal On the last Effective Date of Increase shown on the Data page and prior to age 60, you may apply for a new Automatic Benefit Increase rider. You can do this by making formal application within the period of 60 days prior to and 31 days after the last Effective Date of Increase shown on the Data page. In no case will an automatic benefit increase be made beyond age 60. Approval will be subject to our underwriting guidelines in effect at the time of the application for renewal.

Contract This rider is made part of the policy, based on the application for this rider.

Incontestability of Rider Except for a disability which starts before the end of 2 years from this rider's effective date, we have no right to contest the insurance provided by this rider after it has been in force during the lifetime of the Insured for 2 years from its effective date, excluding any period during which the Insured is disabled.

No misstatements, except fraudulent misstatements, in the application for this rider shall be used to void the insurance provided by this rider or to deny a claim for a disability commencing after the expiration of such 2 year period.

Dates and Amounts When this rider is issued at the same time as the policy, we show the amount of the Automatic Benefit Increase, Effective Date of Increase, Premium Increase and the total of all Premium Increases if all increases go into effect. This rider will take effect on the policy date.

When this rider is added to a policy which is already in force, an Addition rider shows the effective date, the amount of the Automatic Benefit Increase, Effective Date of Increase, Premium Increase and the total of all Premium Increases if all increases go into effect.

(over)

RIDER

COST OF LIVING BENEFIT (COLB)

Cost of Living Benefit While this rider is in effect, the Primary Monthly Income Benefit for Total Disability, as shown on the Data page, may be adjusted to reflect changes, if any, in the cost of living based on the CPI-U. (The CPI-U is the Consumer Price Index for All Urban Consumers, All Items, as published and seasonally adjusted by the Bureau of Labor Statistics.)

For the purpose of determining any cost of living adjustment, we will measure years from the first day of the Elimination Period. In the first year, no adjustment will be made. In the second and each succeeding year, while the benefit term continues, adjustments will be made to the Primary Monthly Income Benefit for Total Disability in each of those years.

Factor for Cost of Living Adjustments The adjustment to the Primary Monthly Income Benefit for Total Disability will be made by multiplying that benefit by the factor which applies for the year. The factor will be determined by dividing the CPI-U for the third month prior to the first month of that year by the CPI-U for the third month prior to the start of the Elimination Period. The factor can not be less than 1.00.

While the same benefit term continues, the factor for a year can not exceed the limit below:

<u>Year</u>	<u>Factor Limit</u>	<u>Year</u>	<u>Factor Limit</u>
1st	1.00	6th	1.28
2nd	1.05	7th	1.34
3rd	1.10	8th	1.41
4th	1.16	9th	1.48
5th	1.22	10th	1.55

For each year beyond the 10th, the factor limit is determined by multiplying the factor limit for the prior year by 1.05.

However, if primary monthly income benefits are payable beyond age 65 for total disability, the factor in use on age 65 will be used for any future adjustments.

If the CPI-U, in our opinion, is no longer a valid index for the purpose of this provision, or is no longer published by the Bureau of Labor Statistics, we will use a new index. The new index will be one approved by the insurance supervisory official of the state in which this policy was delivered.

Permanent Increase in Primary Monthly Income Benefit for Total Disability When a benefit term ends while this rider is in effect, the Primary Monthly Income Benefit for Total Disability will be increased by the amount of the cost of living adjustment applicable at the end of that benefit term. The amount of the permanent increase will be rounded to the nearer \$10 and will remain in effect as long as the policy is in force. There will be no extra premium charge for the permanent increase.

Contract This rider, when paid for, is made part of the policy, based on the application for the rider.

(over)

RIDER

RESIDUAL DISABILITY

1. The following is added to the Definitions section:

Residual Disability During the Elimination Period, residual disability means that due to an injury or a sickness as defined in this policy, the Insured:

- (a) is not able to do one or more of the substantial and material duties of his or her regular job; or
- (b) directly and apart from any other cause, has a loss of income as defined in this rider of at least 20%.

After the Elimination Period has been satisfied, residual disability means the Insured has a loss of income as defined in this rider of at least 20%. The loss of income must result directly from the same or related injury or sickness used to satisfy the Elimination Period. The loss of income must not result from any other cause.

In the case of pregnancy, other than a complication of pregnancy, residual disability means that the Insured, as a result of that pregnancy, can not do one or more of the substantial and material duties of her regular job and that, directly and apart from any other cause, she has a loss of income as defined in this rider of at least 20%. This applies both during the Elimination Period and after the Elimination Period has been satisfied.

2. The Benefits for Disability provision is deleted and the following is substituted:

Benefits for Disability This policy provides monthly income benefits for disability. When the term "disability" is used alone, it means total disability or residual disability, as defined in this policy.

3. The following is added to the Benefits section:

Monthly Income Benefit for Residual Disability This benefit becomes payable as follows: premiums must be paid as called for in the Premiums section and the Elimination Period must be satisfied.

Then, beginning with the Income Starting Date and while residual disability goes on continuously, we will pay a Monthly Income Benefit for Residual Disability for each calendar month of residual disability. This benefit is not payable:

- (a) if a Monthly Income Benefit for Total Disability is payable; or
- (b) after age 65.

The benefit is payable at monthly intervals during the benefit term for each calendar month of residual disability. If the Insured is residually disabled for part of a month, we will pay 1/30th of the monthly income benefit for each day of residual disability. The benefit is payable only after we receive the financial documentation we require.

Non-duplication of Benefits If the Insured is in an automobile accident and is eligible for first party disability benefits under automobile insurance or workers' compensation, any benefit payable under this rider for a residual disability will be reduced by the amount of benefits payable by the other coverage. The total amount payable under this rider, automobile insurance and workers' compensation will not exceed 100% of the residual disability benefit.

(over)

RESIDUAL DISABILITY (continued)

Normal and Usual Business Expenses are those expenses incurred in the normal conduct of business and are generally allowable for federal income tax purposes. The method of depreciation used when determining Prior Monthly Income will also be used when determining Current Income. In addition, for purposes of determining Current Income, normal and usual business expenses must not be in excess of the comparable monthly expenses incurred within the twelve month period just prior to the start of the Elimination Period. Those expenses must be similar in type, allowing adjustments for normal price and utilization increases, if any. Salaries and other amounts paid to family members of the Insured who were not employees before the start of the Elimination Period are not considered normal and usual business expenses.

Extraordinary Income is special income, such as incentive stock options, non-qualified stock options, non-qualified deferred compensation and golden parachute payments.

Prior Monthly Income is equal to the greatest of:

- (a) the highest average monthly income for any 2 consecutive years of the most recent 5 year period during which we paid no benefits under this policy; or
- (b) the average monthly income for the 12 calendar months immediately preceding the Elimination Period; or
- (c) the average monthly income for the 12 calendar months immediately preceding the Elimination Period, excluding any periods of at least 30 consecutive days of disability.

Current Income is the Insured's income during the month for which a monthly income benefit is to be paid.

Indexing Adjustment When a Monthly Income Benefit for Residual Disability is payable, the Prior Monthly Income that we use to determine that benefit may be adjusted to reflect changes, if any, in the cost of living based on the CPI-U. (The CPI-U is the Consumer Price Index for All Urban Consumers, All Items, as published and seasonally adjusted by the Bureau of Labor Statistics.)

For the purpose of determining any Indexing Adjustment, we will measure years from the first day of the Elimination Period. In the first year, no adjustment will be made. In the second and each succeeding year of the same benefit term, adjustments will be made which will affect the monthly income benefits we pay in each of those years.

The adjustment to the Prior Monthly Income for a year will be made by multiplying the Prior Monthly Income by the factor which applies for that year. The factor will be determined by dividing the CPI-U for the third month prior to the first month of that year by the CPI-U for the third month prior to the beginning of the Elimination Period. The factor can not be less than 1.00.

For any year, the factor can not exceed the limit below:

<u>Year</u>	<u>Factor Limit</u>	<u>Year</u>	<u>Factor Limit</u>
1st	1.00	6th	1.28
2nd	1.05	7th	1.34
3rd	1.10	8th	1.41
4th	1.16	9th	1.48
5th	1.22	10th	1.55

For each year beyond the 10th, the factor limit is determined by multiplying the factor limit for the prior year by 1.05.

(over)

RIDER

INCOME PURCHASE OPTION (IPO)

Benefit You may apply to increase the amount of the Primary Monthly Income Benefit for Total Disability, as shown on the Data page, on a Scheduled Option Date or Alternate Option Date, subject to the provisions of this rider. Proof of medical insurability is not required.

The increase purchased on any Scheduled Option Date or Alternate Option Date may not exceed the number of Option Units shown on the Data page times \$1,000, less the total amount of the monthly income purchased on all prior option dates.

The minimum increase which may be purchased on any option date is \$100. The amount purchased must be in multiples of \$10.

Any increase purchased on an option date applies only when the primary monthly income benefit of the policy is payable for a disability which starts on or after that option date, or the date of the application, if later.

However, if the Primary Monthly Income Benefit for Total Disability is increased on a Scheduled Option Date which falls during a benefit term, an amount equal to the number of Option Units shown on the Data page times \$100 will apply for the balance of that benefit term. And, if the Primary Monthly Income Benefit for Total Disability is then being adjusted by the terms of a Cost of Living Benefit rider, the same adjustment factor will apply to this increase.

Scheduled Option Dates The Scheduled Option Dates are ages 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50 and 52, and on which this rider is in effect. No increase in the Primary Monthly Income Benefit for Total Disability can be made on a Scheduled Option Date which has been canceled by a prior increase made on an Alternate Option Date.

Alternate Option Dates An Alternate Option Date is the date on which any of the events listed below occurs and on which this rider is in effect.

- (a) The marriage of the Insured.
- (b) The birth of a living child or children to the Insured.
- (c) The legal adoption of a child or children by the Insured.

We may require proof, acceptable to us, that the marriage, birth or adoption took place. No more than the maximum increase allowable on the next available Scheduled Option Date may be purchased on an Alternate Option Date.

Each increase in the Primary Monthly Income Benefit for Total Disability as of an Alternate Option Date cancels the next available Scheduled Option Date.

Waiver of Premium Benefit If we are waiving the premiums for this policy, we will also waive the premiums for the increase in the Primary Monthly Income Benefit for Total Disability purchased under this rider.

Increase in Monthly Income Benefit for Total Disability Your application, signed by the Insured, and the first premium must be given to us during the 60 days before or the 31 days after a Scheduled Option Date or Alternate Option Date.

(over)

RIGHT TO RENEW POLICY

Non-Cancellable and Guaranteed Renewable to Age 65 While this policy is in force and if the Insured has not reached age 65, we can not take any of the actions listed below, without your consent.

- (a) Refuse to let you renew the policy.
- (b) Limit the policy by rider.
- (c) Change any provisions of the policy.
- (d) Change the table of premium rates.

Renewability of Policy from Age 65 Starting at age 65, if this policy is then in force, it may be renewed for the life of the Insured, as long as he or she works full time at a job and gets paid for that job, and the premiums for this policy are paid when due. Full time means 30 or more hours per week. We have the right to ask for proof that the Insured is working full time at a gainful job. Proof will be needed as often as once each year.

When the Insured's job ends after age 65, except as a result of a total disability which starts at or after age 65, this policy will not stay in force beyond the end of the policy month in which that job ends. We will refund the part of a premium which is paid for the period after that policy month. The payment of a benefit for a total disability that started before the end of that policy month will not be affected.

We have the right to change the table of premium rates which applies to this policy at or after age 65. The premium rates will be changed on a class basis only. The premium rate that applies to this policy, in the changed table, will be based on the age of the Insured at the time of the change.

If the rates are changed, the new rates will take effect for this policy on the anniversary that follows the date of the change.

GENERAL PROVISIONS (continued)

Assignment You can assign this policy or any interest in it. In that case, your interest, and anyone else's, is subject to that of the assignee. An assignee may not change the Owner. You still have the rights of ownership that have not been assigned.

We must have a copy of any assignment. We will not be responsible for the validity of an assignment. The assignment will be subject to any payment made or other action taken by us before it was recorded.

Protection Against Creditors Except as stated in the Assignment provision, payments made under this policy are, to the extent the law permits, exempt from the claims, attachments, or levies of any creditors.

Payments to Company Any payment made to us by check or money order must be payable to New York Life. When asked, a receipt, signed by our President or Secretary, will be given for any premium paid.

Conformity with Statutes This policy is subject to all laws which apply.

Voting Rights Each year there is an election of persons to our Board of Directors. You have the right to vote in person or by mail if this policy is in force, and has been in force for at least one year after the policy date. To find out more about this, you should write to: Secretary, New York Life Insurance Company, 51 Madison Avenue, New York, NY 10010.

NEW YORK LIFE INSURANCE COMPANY

New York, New York 10010

CHECK-O-MATIC PREMIUM ARRANGEMENT

This policy is issued under the New York Life Insurance Company's Check-O-Matic arrangement under which the Company is authorized to draw checks monthly to be charged against a designated bank account for the purpose of collecting premiums payable under this policy. The premium shown in this policy is based on the Company's Check-O-Matic premium rate.

The Check-O-Matic arrangement may be terminated with respect to this policy by the policyowner or by the Company upon written notice. If the arrangement is terminated,

- (1) premiums falling due under this policy after such termination shall be payable directly to the Company monthly, at the Check-O-Matic premium rate, until the first policy anniversary which follows by at least two months the date of such termination, and
- (2) premiums falling due under this policy on and after said anniversary shall be payable directly to the Company at the quarterly rate if the quarterly premium would be at least \$12.50, at the semi-annual rate if the semi-annual premium would be at least \$15 and the quarterly rate is not available, and otherwise at the annual premium rate.

By



Secretary

AMENDMENT

NAME: MAZZAMUTO

NUMBER: H3 236 167

NOTE: This requirement must not be changed or modified in any way, but remain as made out by the Home Office

APPLICATION DATED: JUNE 3, 1993

The NEW YORK LIFE INSURANCE COMPANY will please accept the following answers in lieu of the answers to the corresponding questions in my application for insurance dated as indicated above.

QUESTION No. 7 (A)	DISABILITY INCOME	PRIMARY PLAN Monthly Benefit \$2000 SIS Rider \$ _____, COLB 5% <input checked="" type="checkbox"/> 7 1/2% <input type="checkbox"/> IPO _____ UNITS Elim. Per. (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/> 180 <input checked="" type="checkbox"/> 365 <input type="checkbox"/> 730 <input type="checkbox"/> Benefit Term: 2 years <input type="checkbox"/> 5 years <input type="checkbox"/> To Age 65 <input checked="" type="checkbox"/> To Age 67 <input type="checkbox"/> Lifetime <input type="checkbox"/> Premiums: Level <input checked="" type="checkbox"/> or Step Rate <input type="checkbox"/>
		SECONDARY PLAN Monthly Benefit \$ _____ Elim. Per. (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/> 180 <input type="checkbox"/> 365 <input type="checkbox"/> 730 <input type="checkbox"/> Benefit Term: 2 years <input type="checkbox"/> 5 years <input type="checkbox"/> To Age 65 <input type="checkbox"/> To Age 67 <input type="checkbox"/> Lifetime <input type="checkbox"/>
		ARDI Monthly Benefit \$ _____ Elim. Per. (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/> 180 <input type="checkbox"/> 365 <input type="checkbox"/> 730 <input type="checkbox"/> Benefit Term: To Age 65 <input type="checkbox"/> To Age 67 <input type="checkbox"/> Lifetime <input type="checkbox"/>
		RIDERS: Residual <input checked="" type="checkbox"/> Unrestricted Own Occ <input type="checkbox"/> Other _____
		Exercise Automatic Benefit Increase options? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	OVERHEAD EXPENSE	Max. Monthly Benefit \$ _____ 12 X <input type="checkbox"/> 24 X <input type="checkbox"/> IPO _____ UNITS Elim Per (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/>
DISABILITY BUY-OUT	Buy-Out Benefit \$ _____ IMB _____ UNITS Elim Per (months) 12 <input type="checkbox"/> 24 <input type="checkbox"/> 36 <input type="checkbox"/>	
KEY EMPLOYEE	Monthly Benefit \$ _____ IPO _____ UNITS Elim Per (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/>	
QUESTION No. 3L		OF PART II SHOULD BE ANSWERED INTENDED TO BE YES.

and I hereby agree that the above answers shall form a part of my said application for insurance, the agreement in which I hereby renew and confirm, and shall apply to any policy issued thereon.

Dated _____, 19 _____ Proposed Insured

Witness _____ Applicant

Forwarded to the Central Records Division from CONSTITUTION General Office

, 19 _____

702765

DISABILITY INCOME INSURANCE APPLICATION PART I

NEW YORK LIFE INSURANCE COMPANY 51 Madison Ave., New York, N.Y. 10010

We hereby apply for insurance based on the following representations:

- not an application for a New Policy check one:
- ☐ Add Rider to Policy No. _____ ☐ Converting ARDI in Policy No. _____
- ☐ Change in Policy No. _____ ☐ Amend Application No. _____
- ☐ Application to Reinstate Policy No. _____ ☐ Exercising Option in Policy No. _____
- ☐ Upgrade Policy No. _____
1. (a) PROPOSED INSURED Vincenzo Mazzamuto (b) Soc. Sec. No. 196-56-5744 (c) Sex M ☒ F ☐
- (d) Date of Birth Mo. 05 Day 25 Year 1955 (e) Place of Birth State _____ (f) Country Italy
- (g) ADDRESS (Complete street address including any apt. no. and Zip; do not only give P.O. Box) (iv) Time at Address _____
- (i) Residence 501 Limestone Rd Zip 17013 Carlisle, PA 6 Yrs. _____
- (ii) Telephone number(s) and best time to call Res. (717) 243-0383 A.M. 9:00 P.M. _____ Res. ☒ Bus. ☐
- (iii) Bus. (717) 249-6417 A.M. _____ P.M. 2:00 If Proposed Insured cannot be reached by telephone, explain reason _____
- (h) Has the Proposed Insured smoked cigarettes in the last 12 months? Yes ☐ No ☒
2. (a) OCCUPATION President of First Class Restaurant
- (i) Exact duties, including percentage of time spent performing any manual or supervisory duties and traveling _____
- EXECUTIVE, OFFICE DUTIES ONLY
- (b) Does the proposed Insured have any other occupations? Yes ☐ No ☒ If "Yes", describe _____
- (c) EMPLOYER Vinny's Restaurant Inc. Check if a Federal Govt. Employee _____
- (i) Address of Employer 330 South Hanover St Check if a Municipal Govt. Employee _____
- Carlisle, PA 17013 (ii) Time with Employer _____
- 13 Yrs. _____
- (d) Former Employer (within 2 years) _____
- (i) Address of Former Employer _____
- (e) Does the Proposed Insured own any portion of the business? Yes ☒ No ☐ If "Yes", complete the Supplement to Application Part I.
3. (a) Within the last 2 years, has the Proposed Insured engaged in: motorized racing, scuba or sky diving, ballooning, hang-gliding, ultra-light flying, stunt flying, mountain climbing, or rodeo riding, or does he or she intend to do so? Yes ☐ No ☒ If "Yes", complete Form 7663.
- (b) been convicted for 3 or more motor vehicle moving violations or been charged with driving under the influence of alcohol or drugs? If "Yes", complete CPHQ-Form 17480. Yes ☐ No ☒
- (c) been declined for issue, renewal or reinstatement, rated or charged an extra premium for any type of Life or Health Insurance? If "Yes", give company and reasons, if known, in question 12. Yes ☐ No ☒
4. If cash is to be paid with this application, has the Proposed Insured, within the last 2 years
- (a) been medically treated in, or been advised to seek medical treatment in a hospital, sanitarium or clinic other than for childbirth? Yes ☐ No ☒
- (b) been medically diagnosed as having or received medical treatment for heart trouble, cancer (other than skin cancer), AIDS or AIDS-related complex (ARC), elevated blood pressure requiring medication, had any abnormal blood test results or had an electrocardiogram made for any cause other than a routine physical examination? Yes ☐ No ☒
- (c) had an unexplained weight loss or swollen glands, recurring diarrhea, fever or infection, persistent cough, insomnia or thrush? Yes ☐ No ☒
- If "Yes" to either (a), (b) or (c) above, cash may not be paid. Also give details in question 12.
5. Is it agreed that cash will be received subject to the terms of the attached receipt, that no coverage will be provided under the receipt unless all conditions to coverage are met, and that any such coverage will be temporary and limited in amount? If "No", cash may not be paid Yes ☒ No ☐
- CASH PAID \$ 0

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APPLICATION PART I TO NEW YORK LIFE INSURANCE COMPANY (Continued)

Answer if APPLICANT ☐ and/or OWNER ☐ (check one or both, as appropriate) is not Proposed Insured.

(a) Name _____ (b) Soc. Sec. No. or Emp. ID No. _____
 (c) Residence Address _____ Zip _____
 (d) Business Address _____ Zip _____
 (e) Mailing Address Residence ☐ Business ☐ Other _____
 (f) Date of Birth (or date of incorporation, if a corporation) _____

7. (a) PLAN OF INSURANCE AND OPTIONAL BENEFITS

DISABILITY INCOME

PRIMARY PLAN

Monthly Benefit \$ 2,000 SIS Rider \$ _____, COLB 5% ☒ 7½% ☐ IPO 3 UN
 Elim. Per. (days) 30 ☐ 60 ☐ 90 ☐ 180 ☒ 365 ☐ 730 ☐; Premiums Level ☒ or Step Rate ☐
 Benefit Term 2 years ☐ 5 years ☐ To Age 65 ☒ To Age 67 ☐ Lifetime ☐

SECONDARY PLAN

Monthly Benefit \$ _____ Elim Per (days) 30 ☐ 60 ☐ 90 ☐ 180 ☐ 365 ☐ 730 ☐
 Benefit Term 2 years ☐ 5 years ☐ To Age 65 ☐ To Age 67 ☐ Lifetime ☐

ARDI

Monthly Benefit \$ _____ Elim Per (days) 30 ☐ 60 ☐ 90 ☐ 180 ☐ 365 ☐ 730 ☐
 Benefit Term To Age 65 ☐ To Age 67 ☐ Lifetime ☐

RIDERS (Apply to Primary Plan, Secondary Plan, and ARDI) Residual ☒ Unrestricted Own Occ ☒ Other _____

Exercise Automatic Benefit Increase options? (Applies only to Primary Plan and Secondary Plan) Yes ☒ No ☐

OVERHEAD EXPENSE 12 x ☐ 24 x ☐ IPO _____ Units
 Max. Monthly Benefit \$ _____ Elim Per (days) 30 ☐ 60 ☐ 90 ☐

DISABILITY BUY-OUT Elim Per (months) 12 ☐ 24 ☐ 36 ☐ IMB _____ Units
 Buy-Out Benefit \$ _____

KEY EMPLOYEE DISABILITY Elim Per (days) 30 ☐ 60 ☐ 90 ☐ IPO _____ Units
 Monthly Benefit \$ _____

Complete (b) and (c) below if the Proposed Insured is a non-owner employee. If the Proposed Insured owns any portion of the business, complete (c) below and the Supplement to Application Part I.

(b) EARNED INCOME — Earned income consists of wages, commissions and other amounts received for personal services, reportable for personal federal income tax purposes, after deducting normal business expenses.

- (i) What is the Proposed Insured's earned income at the current annual rate? \$ _____
 (ii) What was the Proposed Insured's earned income for the prior calendar year? \$ _____
 (iii) Does the Proposed Insured ever receive more than 30% of his or her annual earned income in a single month?
 Yes ☐ No ☐ If "Yes", explain in question 12.

(c) UNEARNED INCOME AND NET WORTH

- (i) What is the Proposed Insured's annual unearned income (include interest, dividends, rent, etc.)?
 None ☒ Other \$ _____
 (ii) Is the Proposed Insured's net worth (assets minus liabilities) over \$4,000,000? No ☒ Yes ☐
 If "yes" complete section 2 of Supplement to Application Part I.

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APPLICATION PART I TO NEW YORK LIFE INSURANCE COMPANY (Continued)

(d) OTHER INCOME PROTECTION COVERAGE ON THE PROPOSED INSURED

- (i) Will the employer continue salary in the event of an inability to work due to disability? Yes ☐ No ☒
 If "Yes", salary of \$ _____ will be continued for _____ months.
- (ii) List below other income coverage in force or pending on the Proposed Insured. Indicate type: (1) Individual (2) Association (3) Group (4) Employer Sick Pay (5) Overhead (6) Buy-Out.

Company or Source	Type 1, 2, 3, 4, 5 or 6	Policy or Certificate #	Effective Date	Monthly Income	Elim. Per.	Ben. Term	Will this coverage be replaced?	Date coverage will be terminated?
_____	_____	_____	_____	\$ _____	_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	_____	_____	\$ _____	_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	_____	_____	\$ _____	_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	_____	_____	\$ _____	_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____

(e) PREMIUM PAYER

- (i) If employer is to pay all or part of the premium, indicate the percentage: _____%

3. PREMIUM MODE Annual ☐ Semiannual ☐ Quarterly ☐ C-O-M ☒ Nyl-A-Plan ☐
 CHECK IF LIST BILLING APPLIES ☐

3. POLICY DATE _____, 19 ____ if no date is specified, the policy date is: the later date of Parts I and II if cash is paid with this application; or the date of issue, if cash is not paid. If cash is not paid and the policy has not been issued by the date specified, the policy date will be the date of issue.

3. IF AMENDING APPLICATION PREVIOUSLY SUBMITTED: Since the date of the application for the policy (including any Part I) has the Proposed Insured:

- (a) been admitted to a hospital, sanitarium or other medical facility? Yes ☐ No ☐ If "Yes", submit a new application Part I
- (b) had any illness, injury, or consulted any physician or practitioner for any reason, including routine checkup examination?
 Yes ☐ No ☐ If "Yes", give full details _____

1. (a) IF AMOUNT OF BENEFIT IS BEING INCREASED UNDER AN OPTION: (IPO, IMB)

Amount of Increase \$ _____ (b) Option Date _____, 19 ____ (c) Scheduled ☐ or Alternate (Special) ☐
 If Alternate (Special) Option Date, give: Date of marriage ☐ Birth ☐ or Adoption ☐ Mo. _____ Day _____ Yr. _____

(b) IF ARDI IS BEING CONVERTED

Amount of coverage being converted \$ _____

12. ADDITIONAL DETAILS AND SPECIAL REQUESTS (incl. Question Number, where applicable).

Ques. No. _____

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APPLICATION PART I TO NEW YORK LIFE INSURANCE COMPANY (Continued)

THOSE WHO SIGN THIS PART I AGREE THAT:

1. I of the statements in the application are correctly recorded, and are complete and true to the best of the knowledge and belief of those who made them.
2. No agent or medical examiner has any right to accept risks, make or change contracts, or give up any of the Company's rights or requirements.
3. "Cash Paid" with the application with respect to a new policy or additional benefit provides a limited amount of temporary coverage for up to 60 days, if the terms and conditions of the receipt are met. If an option to increase the amount of income protection is being exercised, it must be available in the policy indicated, and no coverage will be provided before the Option Date. Temporary coverage is not provided if reinstatement of a policy is applied for.
4. To put a policy or benefit issued in response to this application into effect, the policy or written evidence of the benefit

Dated at Carlisle, PA
 on 6/3, 19 93

I certify I have truly and accurately recorded all answers given to me.

Witness Robert M. Brown Agent

Countersigned by Licensed Resident Agent (if required)

must be delivered to the Applicant and the full first premium paid. If temporary coverage with respect to a policy or benefit is not in effect at time of delivery, there must not have been any material change in the insurability of the Proposed Insured as described by the application's written statements; this means that these statements would still be complete and true if made at time of delivery.

5. If this application is in connection with a reinstatement, it is agreed that payment of the overdue premium to New York Life Insurance Company will be applied to a period between the date the policy lapsed and the date of reinstatement.
6. Under penalties of perjury, it is certified that: (a) The Social Security or tax numbers shown in this application are correct; (b) the taxpayer identification numbers; and (c) the holders of such numbers are not subject to any backup withholding of U.S. Federal income tax.

Ving M. Brown

Signature of Applicant

Signature of Proposed Insured if other than Applicant

SUPPLEMENT TO APPLICATION PART 1 TO NEW YORK LIFE INSURANCE COMPANY

Proposed Insured Vincento Mazzamuto Soc. Sec. No. 196-56-574

SECTION 1 - BUSINESS OWNER'S STATEMENT - must be completed if Proposed Insured owns any portion of the business.

COMPLETE QUESTIONS 1 THROUGH 5 FOR ALL PLANS OF INSURANCE

1. Name of Business Vinny's Restaurant, Inc
2. Structure of Business: Sole Proprietor ☒ Partnership ☐ S Corp. ☐ Corp. ☒
3. Date the business was formed (if Corp or S Corp., give date of incorporation) 1980
4. Percent of Business owned by Proposed Insured 100%
5. Is the Proposed Insured's spouse employed by the same employer? Yes ☐ No ☒

COMPLETE QUESTIONS 6 THROUGH 10 WHEN APPLYING FOR OVERHEAD EXPENSE

6. How many partners or co-owners are there (including the Proposed Insured)?
7. Is the Proposed Insured actively employed full-time in the business? Yes ☐ No ☐ If "No", explain
8. Number of full-time employees (including Proposed Insured)

9. Would the absence of the Proposed Insured result in a substantial loss of income to the firm? Yes ☐ No ☐
10. Can the Proposed Insured's duties be performed by an individual presently employed by the firm? Yes ☐ No ☐

COMPLETE QUESTIONS 11 THROUGH 15 ONLY WHEN APPLYING FOR DISABILITY BUY-OUT

11. How many partners or co-owners are there (including the Proposed Insured)?
12. Is the Proposed Insured actively employed full-time in the business? Yes ☐ No ☐ If "No", explain

13. Number of full-time employees (including Proposed Insured)
14. Is there Disability Buy-Out coverage applied for (or already in force) on each partner or co-owner? Yes ☐ No ☐ If "No", explain reason

15. Is it understood that as a requirement for the payment of benefits, a Buy-Out Agreement must be in effect and a Buy-Out effected? Yes ☐ No ☐

NOTE: THE PROPOSED INSURED CANNOT BE THE OWNER OF A DISABILITY BUY-OUT POLICY. THE OWNER MUST BE NAMED IN QUESTION 6 OF PART I OF THE APPLICATION

SECTION 2 - FINANCIAL INFORMATION

EARNED INCOME — Complete the chart below if the Proposed Insured owns any portion of the business. Fill in amounts as reported for Federal income tax purposes.

	Current Annual Rate	Actual Last Year 19 <u>92</u>	Actual 2 Years Ago 19 <u>91</u>
(i) Proposed Insured's share of Gross Business Receipts	\$ <u>184,494</u>	\$ <u>184,494</u>	\$ <u>364,521</u>
(ii) Proposed Insured's share of Business Expenses (Include all salaries and contributions to deductible Pension or Profit Sharing Plans; do not include IRA or Keogh Plan contributions)	\$ <u>131,455</u>	\$ <u>131,455</u>	\$ <u>323,783</u>
(iii) For a Corporation, Proposed Insured's salary, wages, commissions, bonuses from the business, that are included in (ii) above	\$ <u>/</u>	\$ <u>/</u>	\$ <u>/</u>
(iv) Contributions to any Pension or Profit Sharing Plan on Proposed Insured's behalf included in (ii) above	\$ <u>/</u>	\$ <u>/</u>	\$ <u>/</u>
(v) Earned income from other sources, after deducting business expenses	\$ <u>/</u>	\$ <u>/</u>	\$ <u>/</u>
(vi) Total Income (i) - (ii) + (iii) + (iv) + (v)	\$ <u>53,039</u>	\$ <u>53,039</u>	\$ <u>40,738</u>

Is 30% or more of (i) above ever generated in a single month? Yes ☐ No ☒

SUPPLEMENT TO APPLICATION PART 1 TO NEW YORK LIFE INSURANCE COMPANY (Continued)

EARNED INCOME — Complete the chart below if the Proposed Insured is a non-owner employee

	Current Annual Rate	Actual Last Year 19____	Actual 2 Years Ago 19____
(i) Salary, Fees, Commissions & Bonus from primary occupation	\$_____	\$_____	\$_____
(ii) Pension and Profit Sharing Contributions	\$_____	\$_____	\$_____
(iii) Income from other occupations	\$_____	\$_____	\$_____
(iv) Total Earnings	\$_____	\$_____	\$_____
(v) Business Expenses from all occupations	\$_____	\$_____	\$_____
(vi) Net Earned Income (iv-v)	\$_____	\$_____	\$_____

NET WORTH — Fill in the details of the Proposed Insured's net worth, if over \$4,000,000

Total Net Worth \$ 1,500,000

Cash Savings, Stocks, Bonds \$ _____
Interest in Business \$ _____
Personal Property \$ _____
Real Estate - Residence only \$ _____
Other Real Estate \$ _____
Other - give details below \$ _____

Details of other Net Worth _____

THOSE WHO SIGN THIS SUPPLEMENT AGREE THAT

1. All of the statements in the supplement are correctly recorded and are complete and true to the best of the knowledge and belief of those who made them.
2. This supplement will become part of the application for insurance on the Proposed Insured.

Dated at Carlisle, PA
on 6/3, 1993

I certify I have truly and accurately recorded all answers given to me.

Witness Robert H. Hurns Agent

Countersigned by Licensed Resident Agent (if required)

Vincent M. Smith

Signature of Applicant

Signature of Proposed Insured if other than Applicant

JUN 09 '93 04:25PM NY LIFE INST GEN OFFICE

P.2

MED.

- ☐ NEW YORK LIFE INSURANCE COMPANY
☐ NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION (A Delaware Corp.)
 51 Madison Avenue, New York, N.Y. 10010

Policy Number
(if known)?Answers to the Paramedical Examiner, forming Part II of
Application for Insurance. Complete this form in private

Name of Person Examined? Vincenzo Mazzomato b. Date of Birth? Mo: 5 Day: 25 Yr: 55 c. Soc. Sec. or Soc. Ins. No.? 196 56 5744

Personal Physician a. Name? Mostard Associates (Terry Robinson D.O.) Col 186 H. 17013
 none, or if not b. Address and Phone No.? SAME AS ABOVE
 consulted in last c. Last consulted: Date? 21 month Reason? Knee injury
 yrs., so state, d. Treatment: Type? Examination Medication? N/A

Give the following information, so far as known, for the person being examined. If "Yes" to any question, give full details in Question 11.

- | | |
|---|--|
| <p>past 10 years, has such person consulted a physician or practitioner been treated for, had, or been informed that he or she had</p> <p>heart trouble, angina, stroke, murmur or irregular pulse? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>diabetes or elevated blood sugar? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>chronic bronchitis, emphysema, asthma or other lung disorder? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>cancer, tumor, lymphoma; lupus or collagen disorder; rheumatoid arthritis or muscular disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>pancreatitis; urine sugar; hepatitis, cirrhosis or liver trouble? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>AIDS, AIDS-related complex (ARC), or other immune deficiency? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>elevated blood pressure; thrombophlebitis, embolism or other circulatory disorder; kidney disease; albumin or blood in urine? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>ulcerative colitis, ileitis or other chronic intestinal disorder? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>seizures, dizziness or fainting; other nervous system disorder? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>anemia, thyroid or other blood or gland disorder? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>ulcer; hernia; varicose veins; gall bladder disorder; kidney stones? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>back, spine, joint or bone disorder; eye, ear or skin disorder? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>(if a male) disorder of prostate or reproductive organs? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>(if a female) disorder of pelvic organs, breasts, menses or pregnancy, or is she now pregnant? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>any such person now taking prescription medication? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | <p>5. In last 2 years, has any such person had any of the following: Yes No</p> <p>a. unexplained weight loss or swollen glands; recurring diarrhea, fever or infection; persistent cough, pneumonia, or thrush? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>b. chest discomfort, edema; transient visual loss, muscle weakness, shortness of breath, or internal bleeding? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>6. In last 10 years, has any such person been counselled, treated or hospitalized for any psychiatric, emotional or mental health condition, or for the use of alcohol or drugs? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>7. Other than as stated, has any such person during past 2 years had</p> <p>a. treatment or surgery in a hospital or other facility? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>b. an electrocardiogram, x-ray or other diagnostic test, or an examination for checkup or other purpose? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>c. advice about any treatment, surgery or diagnostic testing which was not completed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>8. Has any such person, for physical or mental health reasons, ever received disability benefits, compensation or pension; or been rejected for, or discharged from, military service? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>9. Any history of angina, heart trouble or stroke before age 60 among natural parents, brothers or sisters of any such person? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If "Yes", give relationship, age at onset and subsequent history.</p> <p>10. Has such person smoked any cigarettes in the past 12 months? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
|---|--|

11. GIVE FULL DETAILS FOR EACH "YES" ANSWER IN QUESTIONS 3-10

ues.	b. Reason — nature and severity of condition?	c. Onset?	d. Recovery?	e. Names and Addresses of Physicians,
p.	(Include frequency, treatment, medication, surgery and results.)	Mo. Yr.	Mo. Yr.	Hospitals or Medical Facilities?

1. Father: stroke prior to age 60.

E UNDERSIGNED DECLARE THAT, to the best of their knowledge and belief, all answers given in this Part II are correctly recorded, complete and true.

Witnessed by Col 186 Po. on 5-19, 19 93
 certify I have truly and accurately recorded all answers given to me.

Witnessed by S. H. Conrad, RMT
 Signature & title of person completing Questionnaire

Signature of person examined
N/A
 Signature of Parent or Guardian, if person examined is under 14 years 6 months

AMENDMENT

1E: MAZZAMUTO

NUMBER: H3 236 167

NOTE: This requirement must not be changed or modified in any way, but remain as made out by the Home Office

APPLICATION DATED: JUNE 3, 1993

The NEW YORK LIFE INSURANCE COMPANY will please accept the following answers in lieu of the answers to the corresponding questions in my application for insurance dated as indicated above.

QUESTION No. 7 (A)	DISABILITY INCOME	PRIMARY PLAN Monthly Benefit \$2000 SIS Rider \$ _____ COLB 5% <input checked="" type="checkbox"/> 7 1/2% <input type="checkbox"/> IPO _____ UNITS Elim. Per. (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/> 180 <input checked="" type="checkbox"/> 365 <input type="checkbox"/> 730 <input type="checkbox"/> Benefit Term: 2 years <input type="checkbox"/> 5 years <input type="checkbox"/> To Age 65 <input checked="" type="checkbox"/> To Age 67 <input type="checkbox"/> Lifetime <input type="checkbox"/> Premiums: Level <input checked="" type="checkbox"/> or Step Rate <input type="checkbox"/>	
		SECONDARY PLAN Monthly Benefit \$ _____ Elim. Per. (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/> 180 <input type="checkbox"/> 365 <input type="checkbox"/> 730 <input type="checkbox"/> Benefit Term: 2 years <input type="checkbox"/> 5 years <input type="checkbox"/> To Age 65 <input type="checkbox"/> To Age 67 <input type="checkbox"/> Lifetime <input type="checkbox"/>	
		ARDI Monthly Benefit \$ _____ Elim. Per. (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/> 180 <input type="checkbox"/> 365 <input type="checkbox"/> 730 <input type="checkbox"/> Benefit Term: To Age 65 <input type="checkbox"/> To Age 67 <input type="checkbox"/> Lifetime <input type="checkbox"/>	
		RIDERS: Residual <input checked="" type="checkbox"/> Unrestricted Own Occ <input type="checkbox"/> Other _____	
		Exercise Automatic Benefit Increase options? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	OVERHEAD EXPENSE	Max. Monthly Benefit \$ _____ 12 X <input type="checkbox"/> 24 X <input type="checkbox"/> IPO _____ UNITS Elim Per (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/>	
	DISABILITY BUY-OUT	Buy-Out Benefit \$ _____ IMB _____ UNITS Elim Per (months) 12 <input type="checkbox"/> 24 <input type="checkbox"/> 36 <input type="checkbox"/>	
	KEY EMPLOYEE	Monthly Benefit \$ _____ IPO _____ UNITS Elim Per (days) 30 <input type="checkbox"/> 60 <input type="checkbox"/> 90 <input type="checkbox"/>	
	QUESTION No. 3L		OF PART J. SHOULD BE ANSWERED INTENDED TO BE YES.

I hereby agree that the above answers shall form a part of my said application for insurance, the agreement in which I hereby renew and confirm, and shall apply to any policy issued thereon.

Signed 8/28, 1993 Vincent Mazzamuto Proposed Insured
 Witness Salvatore Mazzamuto Applicant

Filed to the Central Records Division from CONSTITUTION General Office

NOTICE OF HEALTH INSURANCE CHANGE

CSO NAME Cleveland		POLICY NUMBER FB H3236167		CSO CODE V		SURNAME MAZZAMUTO		INSURED'S FIRST VINCENZO		M.I. V		G.O. V	
G.O. NAME Constitution		AGENT FERRIGNO		DATE 080399		NEW PREMIUM 2256.73		SERIAL NUMBER H21257					
ORIGINAL PAID TO DATE 82899		CHANGED PAID TO DATE 82899		PREMIUM SUSPENSE 080399		STATUS 2256.73		EXCEPTION CODE		STOP ACTION CODE			
CHANGE PENDING INDICATOR 82899		SEE NOTE 82899		NOTE: ANY ITEM AFTER THE CHECK CHARACTER REQUIRES RESTATING OF THE FUTURE CHANGES AND MODE CHANGES, IF APPLICABLE.									

CHANGE REQUEST DATE 080399	EFFECTIVE DATE OF CHANGE ED 082899	DIV. CHANGE BASIS FROM YR. DZ	COM DAY FAM STAT KB	OCCUPATION CLASS KC	OCCUPATION CODE KD	BENEFIT AMOUNT KE	ACTUAR TRANS C NT
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INSURED EP	DATE OF BIRTH PB	SEX STATUS PC	PLANS COVERED PD	ATTAINED AGE PA	EFFECTIVE DATE OF ADD OR DEL PA	AGENT ONE SHOT COMM CODE PA	SHARE PA
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SPOUSE EZ	DATE OF BIRTH PE	SEX STATUS PF	PLANS COVERED PG	ATTAINED AGE AB	EFFECTIVE DATE OF ADD OR DEL AC	PREMIUM RATE AB	METHOD OF COLLECTION AC
---------------------	----------------------------	-------------------------	----------------------------	---------------------------	---	---------------------------	-----------------------------------

CHILDREN	FUTURE CHANGE DATA	PREMIUM FROM EFFECTIVE DATE OF CHANGE
----------	--------------------	---------------------------------------

TOTAL NUMBER OF CHILDREN COVERED KH	EFFECTIVE DATE OF CHILD'S ADD/DEL JL	TYPE ER	DATE ES	AMOUNT ET	INCL. BASIC 674.90	EXTRA OF 157.40
FIRST JA	DATE OF BIRTH JM	SEX STATUS JN	PLANS COVERED JP	ATTAINED AGE JR	1ST RIDER 419.20	INCL. RIDER 40.24
SECOND JB	DATE OF BIRTH JP	SEX STATUS JR	PLANS COVERED JR	ATTAINED AGE JR	2nd RIDER 740.25	INCL. RIDER 740.25
THIRD JC	DATE OF BIRTH JR	SEX STATUS JR	PLANS COVERED JR	ATTAINED AGE JR	3RD RIDER 740.25	INCL. RIDER 740.25
FOURTH JD	DATE OF BIRTH JR	SEX STATUS JR	PLANS COVERED JR	ATTAINED AGE JR	EXTRA OF AMIC	

FIRST 10.LB	DATE OF BIRTH AMIC	SEX STATUS 65KLG	PLANS COVERED 91.LJ	ATTAINED AGE 37	SPOUSE'S ATTAINED AGE 44	NO CHILDREN COVERED LR	COM DAY FAM STAT LC	BENEFIT AMOUNT 1500
SECOND LD	DATE OF BIRTH 082899	SEX STATUS LM	PLANS COVERED LM	ATTAINED AGE LN	SPOUSE'S ATTAINED AGE 022054	NO CHILDREN COVERED LS	COM DAY FAM STAT LS	BENEFIT AMOUNT 1500
THIRD MA	DATE OF BIRTH MB	SEX STATUS MG	PLANS COVERED MJ	ATTAINED AGE MP	SPOUSE'S ATTAINED AGE MR	NO CHILDREN COVERED MH	COM DAY FAM STAT MC	BENEFIT AMOUNT ME
FOURTH MD	DATE OF BIRTH MF	SEX STATUS MM	PLANS COVERED MN	ATTAINED AGE MS	SPOUSE'S ATTAINED AGE MK	NO CHILDREN COVERED ML	COM DAY FAM STAT MS	BENEFIT AMOUNT MK

INTERVAL PREMIUMS	DUE COMPANY FROM	TO	PREMIUM NOTICE OF CHANGE
REFUND PREMIUMS	DUE INSURED FROM	TO	1596.96
RIDER NO. 91-450	TO BE SIGNED BY INSURED. ORIGINAL TO BE RETURNED TO CENTRAL RECORDS DIVISION VGO. COPY TO BE ATTACHED TO POLICY.		
RIDER NO. 91-450	TO BE ATTACHED TO POLICY. <input type="checkbox"/> COPY OF APPLICATION TO BE ATTACHED TO POLICY.		
POLICY TO BE RETURNED FOR INDORSEMENT. <input type="checkbox"/> IF TERMINATED CHILD DESIRES INDIVIDUAL POLICY. SECURE APP. 62-501.			
PREMIUM NOTICES TO BE ADDRESSED TO			

RIDER(S)	EFFECTIVE
CHANGE	8/28/99

Exercise 1500 Sch. opt COMPLETED BY **Pamela Ricketts**

SEX	CLASS	EXPIRY YEAR	AMOUNT	APPLIES TO PLAN	SEX	IMP CODE	DES	TYPE
1ST	NA			NB				NC
IMPAIRMENT	2ND	ND		NE				NF
EXCLUSION	3RD	NG		NH				NJ
DATA	4TH	NK		NL				NM
		NN		NR				NS
				NP				NP

COPY FOR CONTROLLER'S DEPARTMENT

BENEFIT ADDITION RIDER

Policy Number: H3 236 167

Insured: Vincenzo Mazzamuto

The Benefit Addition rider and any rider(s) named below are added to this policy. They are made part of the policy based on:

(1) The application for them.

(2) The payment of the amounts shown in (a) and (b) below:

(a) \$-0- payable as of **August 28, 1999**. This is the effective date of this Benefit Addition Rider and the rider(s) named below.

(b) **\$2256.73** payable at **Semi-Annual** intervals, beginning as of **August 28, 1999**, subject to the terms of the policy.

ADDITIONAL BENEFIT
Additional Monthly Optional
income for \$1500 added

PREMIUM AMOUNT
\$740.25

Incontestability The Company can not contest the coverage under this rider after it has been in force during the lifetime of the insured for 2 years, except for a loss which starts before the end of those 2 years.

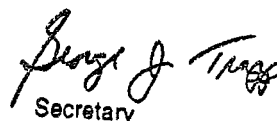
Effective Date of this Rider This Benefit Addition Rider and any rider(s) named above will not take effect as of the policy date. Instead, they will take effect on this rider's effective date, shown above. The additional benefits provided will not apply to any claim which results from an injury which occurs or a sickness which first manifests itself before the effective date of this rider.

Change of Entire Contract Provision The Entire Contract provision of the policy is changed to include this statement.

"The attached copy of any application for additional benefits is part of the entire contract."

NEW YORK LIFE INSURANCE COMPANY


PRESIDENT


Secretary

Countersigned By _____
Licensed Resident Agent if required by statute or regulation

New York Life Insurance Company

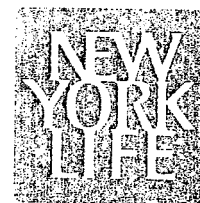
51 Madison Avenue, New York, NY 10010
A Mutual Company Founded in 1845

Disability Income Policy

Non-Cancellable and Guaranteed Renewable
to Age 65 - No Increase in Premium Rates

Conditionally Renewable From Age 65 For Life
Subject to Change in Premium Rates

This is a participating policy.



Exh B

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VINCENZO MAZZAMUTO,
Plaintiff,

v.

UNUM PROVIDENT CORPORATION;
PAUL REVERE LIFE INSURANCE
COMPANY; and NEW YORK LIFE
INSURANCE COMPANY
Defendants

CIVIL ACTION – LAW

NO.

JUDGE:

JURY TRIAL DEMANDED

AMENDED COMPLAINT

1. Plaintiff Vincenzo “Vincent” Mazzamuto is an adult individual residing at 501 Limestone Road, Carlisle, Cumberland County, Pennsylvania.
2. Defendant UNUM Provident Corporation (hereinafter “UNUM”) is an insurance company with its principal place of business in Worcester, Massachusetts.
3. Defendant Paul Revere Insurance Company (hereinafter “Paul Revere”) is an insurance company with a principal place of business in Worcester, Massachusetts.
4. Defendant New York Life Insurance Company (hereinafter “New York Life”) is an insurance company with a principal place of business in New York, New York.

5. It is believed by Plaintiff and, therefore, averred that Paul Revere is a subsidiary of UNUM and that Paul Revere is the administrator for New York Life.

6. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §1332.

7. Venue in the Middle District of Pennsylvania is proper because Defendants are licensed to do business in the Commonwealth of Pennsylvania and regularly conduct business in the Middle District.

8. Plaintiff Mr. Mazzamuto is a long-time policyholder with Defendant New York Life with disability insurance policies for his position as owner/president of Vinny's Restaurant dating back to the early 1990's.

9. Specifically, Mr. Mazzamuto was and is an insured under disability policy number H3236167 issued by Defendant New York Life. A copy of policy number H3236167 is attached as **Exhibit A**.

10. In exchange for Mr. Mazzamuto's annual premiums, the before mentioned policy provided for the payment of monthly benefits during times of disability when Mr. Mazzamuto was incapable of performing his duties as owner/president of Vinny's Pizzeria:

Total Disability. From the start of a total disability until two years after the Income Starting Date, disability means the that the Insured can not do the substantial and material duties of his or her regular job and is not working at any other gainful job.

The cause of the total disability must be an injury or a sickness.

* * *

Residual Disability. Residual Disability under the terms of Plaintiff's Policy is satisfied when, during the elimination period, as a result of an injury or sickness, the insured:

- a. is not able to do one or more of the substantial and material duties of his or her regular job; or

- b. directly and apart from any other cause, has a loss of income of at least 20%.

11. In and around July 22, 2000, Plaintiff Vincent Mazzamuto suffered a heart attack.

12. At that time, while being transported to the emergency room for physician care, Vincent Mazzamuto aggravated a pre-existing back injury. Because of his resulting lower back pain, Mr. Mazzamuto is not able to bend or stand for prolonged periods of time.

13. As a result of his heart attack, Mr. Mazzamuto underwent cardiac catheterization and cardiac rehabilitation.

14. As a result of his aggravated lower back problems, Mr. Mazzamuto continues to receive continuous medical care and treatment.

15. As a result of Mr. Mazzamuto's heart condition and subsequent lower back problems, as noted by his treating physician, Douglas J. Bower, M.D., in the Attending Physician's Statement submitted to Paul Revere/New York Life, Mr. Mazzamuto required disability because of his inability to cope with the stressful atmosphere of work, perform heavy lifting and withstand the long periods of standing required by Mr. Mazzamuto's profession as owner/president of Vinny's Restaurant.

16. After providing verbal notice to UNUM/Paul Revere/New York Life of his disability claim, in or around November of 2000, Mr. Mazzamuto filed his disability claim with UNUM/Paul Revere/New York Life.

17. In or around November of 2000, Mr. Mazzamuto's treating physician, Douglas J. Bower, M.D., submitted a letter to UNUM/Paul Revere/New York Life to clarify facts about Plaintiff's condition because the physician found the medical forms provided by Defendants to be insufficient to properly describe Mr. Mazzamuto's several medical problems. Within his letter Dr. Bowers clearly describes Mr. Mazzamuto's heart condition and subsequent back

problems resulting from his July 22, 2000, admittance into the hospital. Dr. Bowers noted that "it is unlikely [Mr. Mazzamuto] will be able to return to work in the foreseeable future" as a result of his cardiac problems which manifest with the significant anxiety that he experiences while at work as well as the before mentioned back problems.

18. Within his Statement of Occupational Duties and Employment form submitted by Mr. Mazzamuto to New York Life in or around November of 2000, he noted that his work activities require 4.5 hours of walking and standing. Furthermore, Mr. Mazzamuto noted in an Occupational Description form submitted to New York Life in or about January of 2001, that his job required him to stand most of the time which aggravated his lower back condition and that his job was stressful which caused chest pain and shortness of breath and aggravated his lower back condition.

19. Approximately six months after Mr. Mazzamuto submitted his disability claim, and after several letters from his counsel in or about March of 2001, demanding a decision on the status of his claim, Defendant UNUM/Paul Revere/New York Life denied Mr. Mazzamuto's claim on or about April 20, 2001. During the six month interlude, Plaintiff was utterly confused and discouraged by the claims handling process in which delays were caused by 1) requests for Plaintiff to provide medical documentation and statements concerning both his back and heart conditions; 2) numerous phone interviews and discussions with claims handlers; and 3) requests by several of Defendant's different departments for various job description forms and monthly progress reports. Many of Defendants' requests during this six-month period resulted in Mr. Mazzamuto providing duplicative information.

20. Since April 20, 2001, Defendants have persisted in their denial of Plaintiff's claim despite Defendants' receipt of the following information:

5/8/01 – Mr. Angino wrote a letter to Defendants summarizing Mr. Mazzamuto's claim and suggesting that Defendants would be guilty of bad faith if they did not pay the claim on the basis of the existing record.

7/12/01 – Dr. Schneider submitted report for Social Security Administration

4/16/02 – Defendants took Dr. Bowers' deposition

6/13/02 – Plaintiff filed first expert report

6/14/02 – Defendant New York Life agreed Mr. Mazzamuto was totally disabled as to his life insurance premium payments

6/27/02 – Defendant Dr. Steinman submitted an expert report without ever examining the patient opining from the records that Mr. Mazzamuto could do his work with accommodations

6/28/02 – Defendant Dr. Hostetter submitted a report to the effect that he could not express an opinion as to Mr. Mazzamuto's claim of disability from emotional causes

7/11/02 – Plaintiff filed a second expert report

7/25/02 – Mr. Mazzamuto was found to be totally disabled by the Social Security Administration

8/15/02 – Defendant New York Life reconfirmed that Mr. Mazzamuto was totally disabled and need not pay his life insurance premiums

8/22/02 – Plaintiff's counsel filed the first of various articles, depositions, opinions from courts to the effect that UNUM/Provident had been engaging in unfair insurance practices for a number of years with respect to disability specific occupation policies which UNUM/Provident had found to be unprofitable

10/29/02 – Plaintiff’s counsel supplied Defendants’ counsel with a copy of a “day in the life” film of Mr. Mazzamuto

11/25/02 – Plaintiff filed a Motion to Add Additional Authority and a Motion to Supplement the Record. Plaintiff’s Motion to add additional authority referenced relevant cases against UNUM/Provident. Plaintiff’s Motion to Supplement Record sought to add an additional report from Plaintiff’s expert dated November 19, 2002, as well as two depositions of Dr. William Feist, a prior employee of Defendant UNUM/Provident.

12/5/02 – Plaintiff filed a Second Motion to Supplement the Record to add an additional report dated December 4, 2002, from Plaintiff’s expert Gordon K. Rose

12/23/02 – Plaintiff’s counsel filed an Affidavit

1/27/03 – Plaintiff’s counsel responded to Defendants’ Motion to Strike Affidavit and Plaintiff’s Memo of Law opposing Defendants’ Motion to Strike

2/12/03 – Plaintiff’s counsel filed a Motion to Add Authority to Summary Judgment Motions

2/12/03 – Plaintiff’s counsel supplied defense counsel with up-to-date medical records from Dr. Bower and the Pain Management Clinic

21. Plaintiff contends that Defendants are guilty of bad faith for the way they handled Mr. Mazzamuto’s claim from July, 2000 to the present, as well as engaging in a course of practice whereby (a) they utilized in-house employee reviewers, (b) the reviewers were motivated to deny large claims and particularly occupation specific disability policies, (c) Defendants taught their employees to reference Plaintiff’s application job description rather than the specific requirements of his actual job, (d) Defendants specifically declined and/or failed to

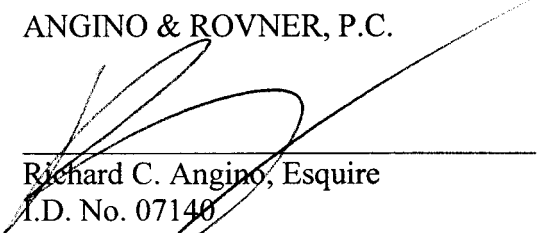
consider Plaintiff's actual occupational activities, (e) Defendants failed to follow the company manual of seeking independent medical examinations, (f) Defendants declined Plaintiff's claim on the basis of in-house office review rather than an independent medical examination, (g) Defendants persisted in declining Plaintiff's claim despite a finding of total disability by the Social Security Administration with a more demanding definition of "total disability," as well as Defendant New York Life, with respect to Plaintiff's life insurance policy with a similar definition of "total disability" and in the face of court decisions and jury awards in similar cases finding Defendants guilty of bad faith and unfair insurance practice actions and after juries had imposed millions of dollars and Defendants were ordered to cease and desist in their unfair insurance practices

22. Defendants have been advised and are well aware of all of the proposed amended facts and Plaintiff's legal position with respect to the additional Amended Complaint factual allegations and have had many months to prepare to defend same.

23. As a direct and proximate result of Defendants' bad faith conduct, Mr. Mazzamuto has been damaged and is entitled to recover his damages, including the underlying disability claim, interest on his claim, attorney's fees and costs, and punitive damages pursuant to 42 Pa.C.S.A. §8371.

WHEREFORE, Plaintiff demands judgment against Defendant in excess of \$150,000, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

ANGINO & ROVNER, P.C.



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Attorneys for Plaintiff

Dated: 2/19/03

Exh C

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VINCENZO MAZZAMUTO,
Plaintiff,

v.

UNUM PROVIDENT CORPORATION;
PAUL REVERE LIFE INSURANCE
COMPANY; and NEW YORK LIFE
INSURANCE COMPANY
Defendants

CIVIL ACTION – LAW

NO.

JUDGE:

JURY TRIAL DEMANDED

AMENDED COMPLAINT

1. Plaintiff Vincenzo “Vincent” Mazzamuto is an adult individual residing at 501 Limestone Road, Carlisle, Cumberland County, Pennsylvania.
2. Defendant UNUM Provident Corporation (hereinafter “UNUM”) is an insurance company with its principal place of business in Worcester, Massachusetts.
3. Defendant Paul Revere Insurance Company (hereinafter “Paul Revere”) is an insurance company with a principal place of business in Worcester, Massachusetts.
4. Defendant New York Life Insurance Company (hereinafter “New York Life”) is an insurance company with a principal place of business in New York, New York.

5. It is believed by Plaintiff and, therefore, averred that Paul Revere is a subsidiary of UNUM and that Paul Revere is the administrator for New York Life.

6. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §1332.

7. Venue in the Middle District of Pennsylvania is proper because Defendants are licensed to do business in the Commonwealth of Pennsylvania and regularly conduct business in the Middle District.

8. Plaintiff Mr. Mazzamuto is a long-time policyholder with Defendant New York Life with disability insurance policies for his position as owner/president of Vinny's Restaurant dating back to the early 1990's.

9. Specifically, Mr. Mazzamuto was and is an insured under disability policy number H3236167 issued by Defendant New York Life. A copy of policy number H3236167 is attached as **Exhibit A**.

10. In exchange for Mr. Mazzamuto's annual premiums, the before mentioned policy provided for the payment of monthly benefits during times of disability when Mr. Mazzamuto was incapable of performing his duties as owner/president of Vinny's Pizzeria:

Total Disability. From the start of a total disability until two years after the Income Starting Date, disability means the that the Insured can not do the substantial and material duties of his or her regular job and is not working at any other gainful job.

The cause of the total disability must be an injury or a sickness.

* * *

Residual Disability. Residual Disability under the terms of Plaintiff's Policy is satisfied when, during the elimination period, as a result of an injury or sickness, the insured:

_____a. is not able to do one or more of the substantial and material ~~duties~~ duties of his or her regular job; or

_____ b. directly and apart from any other cause, has a loss of income of at least 20%.

11. In and around July 22, 2000, Plaintiff Vincent Mazzamuto suffered a heart attack.

12. At that time, while being transported to the emergency room for physician care, Vincent Mazzamuto aggravated a pre-existing back injury. Because of his resulting lower back pain, Mr. Mazzamuto is not able to bend or stand for prolonged periods of time.

13. As a result of his heart attack, Mr. Mazzamuto underwent cardiac catheritization and cardiac rehabilitation.

14. As a result of his aggravated lower back problems, Mr. Mazzamuto continues to receive continuous medical care and treatment.

15. As a result of Mr. Mazzamuto's heart condition and subsequent lower back problems, as noted by his treating physician, Douglas J. Bower, M.D., in the Attending Physician's Statement submitted to Paul Revere/New York Life, Mr. Mazzamuto required disability because of his inability to cope with the stressful atmosphere of work, perform heavy lifting and withstand the long periods of standing required by Mr. Mazzamuto's profession as owner/president of Vinny's Restaurant.

16. After providing verbal notice to UNUM/Paul Revere/New York Life of his disability claim, in or around November of 2000, Mr. Mazzamuto filed his disability claim with UNUM/Paul Revere/New York Life.

17. In or around November of 2000, Mr. Mazzamuto's treating physician, Douglas J. Bower, M.D., submitted a letter to UNUM/Paul Revere/New York Life to clarify facts about Plaintiff's condition because the physician found the medical forms provided by Defendants to be insufficient to properly describe Mr. Mazzamuto's several medical problems. Within his letter Dr. Bowers clearly describes Mr. Mazzamuto's heart condition and subsequent back

problems resulting from his July 22, 2000, admittance into the hospital. Dr. Bowers noted that "it is unlikely [Mr. Mazzamuto] will be able to return to work in the foreseeable future" as a result of his cardiac problems which manifest with the significant anxiety that he experiences while at work as well as the before mentioned back problems.

18. Within his Statement of Occupational Duties and Employment form submitted by Mr. Mazzamuto to New York Life in or around November of 2000, he noted that his work activities require 4.5 hours of walking and standing. Furthermore, Mr. Mazzamuto noted in an Occupational Description form submitted to New York Life in or about January of 2001, that his job required him to stand most of the time which aggravated his loser back condition and that his job was stressful which caused chest pain and shortness of breath and aggravated his lower back condition.

19. Approximately six months after Mr. Mazzamuto submitted his disability claim, and after several letters from his counsel in or about March of 2001, demanding a decision on the status of his claim, Defendant UNUM/Paul Revere/New York Life denied Mr. Mazzamuto's claim on or about April 20, 2001. During the six month interlude, Plaintiff was utterly confused and discouraged by the claims handling process in which delays were caused by 1) requests for Plaintiff to provide medical documentation and statements concerning both his back and heart conditions; 2) numerous phone interviews and discussions with claims handlers; and 3) requests by several of Defendant's different departments for various job description forms and monthly progress reports. Many of Defendants' requests during this six-month period resulted in Mr. Mazzamuto providing duplicative information.

20. ~~Defendants' handling of Mr. Mazzamuto's claim for total disability was in bad faith because Defendants had no reasonable basis for denying Mr. Mazzamuto the benefits under~~

~~his disability policy, and Defendants knew of and/or recklessly disregarded its lack of a~~
~~reasonable basis in denying Plaintiff's claim.~~Since April 20, 2001, Defendants have persisted in
their denial of Plaintiff's claim despite Defendants' receipt of the following information:

5/8/01 – Mr. Angino wrote a letter to Defendants summarizing Mr. Mazzamuto's claim
and suggesting that Defendants would be guilty of bad faith if they did not pay the
claim on the basis of the existing record.

7/12/01 – Dr. Schneider submitted report for Social Security Administration

4/16/02 – Defendants took Dr. Bowers' deposition

6/13/02 – Plaintiff filed first expert report

6/14/02 – Defendant New York Life agreed Mr. Mazzamuto was totally disabled as to his
life insurance premium payments

6/27/02 – Defendant Dr. Steinman submitted an expert report without ever examining the
patient opining from the records that Mr. Mazzamuto could do his work with
accommodations

6/28/02 – Defendant Dr. Hostetter submitted a report to the effect that he could not
express an opinion as to Mr. Mazzamuto's claim of disability from emotional
causes

7/11/02 – Plaintiff filed a second expert report

7/25/02 – Mr. Mazzamuto was found to be totally disabled by the Social Security
Administration

8/15/02 – Defendant New York Life reconfirmed that Mr. Mazzamuto was totally
disabled and need not pay his life insurance premiums

8/22/02 – Plaintiff’s counsel filed the first of various articles, depositions, opinions from courts to the effect that UNUM/Provident had been engaging in unfair insurance practices for a number of years with respect to disability specific occupation policies which UNUM/Provident had found to be unprofitable

10/29/02 – Plaintiff’s counsel supplied Defendants’ counsel with a copy of a “day in the life” film of Mr. Mazzamuto

11/25/02 – Plaintiff filed a Motion to Add Additional Authority and a Motion to Supplement the Record. Plaintiff’s Motion to add additional authority referenced relevant cases against UNUM/Provident. Plaintiff’s Motion to Supplement Record sought to add an additional report from Plaintiff’s expert dated November 19, 2002, as well as two depositions of Dr. William Feist, a prior employee of Defendant UNUM/Provident.

12/5/02 – Plaintiff filed a Second Motion to Supplement the Record to add an additional report dated December 4, 2002, from Plaintiff’s expert Gordon K. Rose

12/23/02 – Plaintiff’s counsel filed an Affidavit

1/27/03 – Plaintiff’s counsel responded to Defendants’ Motion to Strike Affidavit and Plaintiff’s Memo of Law opposing Defendants’ Motion to Strike

2/12/03 – Plaintiff’s counsel filed a Motion to Add Authority to Summary Judgment Motions

2/12/03 – Plaintiff’s counsel supplied defense counsel with up-to-date medical records from Dr. Bower and the Pain Management Clinic

21. Plaintiff contends that Defendants are guilty of bad faith for the way they handled Mr. Mazzamuto’s claim from July, 2000 to the present, as well as engaging in a course of

practice whereby (a) they utilized in-house employee reviewers, (b) the reviewers were motivated to deny large claims and particularly occupation specific disability policies, (c) Defendants taught their employees to reference Plaintiff's application job description rather than the specific requirements of his actual job, (d) Defendants specifically declined and/or failed to consider Plaintiff's actual occupational activities, (e) Defendants failed to follow the company manual of seeking independent medical examinations, (f) Defendants declined Plaintiff's claim on the basis of in-house office review rather than an independent medical examination, (g) Defendants persisted in declining Plaintiff's claim despite a finding of total disability by the Social Security Administration with a more demanding definition of "total disability," as well as Defendant New York Life, with respect to Plaintiff's life insurance policy with a similar definition of "total disability" and in the face of court decisions and jury awards in similar cases finding Defendants guilty of bad faith and unfair insurance practice actions and after juries had imposed millions of dollars and Defendants were ordered to cease and desist in their unfair insurance practices

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Harrisburg, PA 17110
(717) 238-6791
Attorneys for Plaintiff

Dated:

CERTIFICATE OF SERVICE

I, Richard C. Angino, Esquire, hereby certify that a true and correct copy of the foregoing
PLAINTIFF'S PETITION TO FILE AMENDED COMPLAINT was served by United
States first-class mail, postage prepaid, upon the following:

E. Thomas Henefer, Esquire

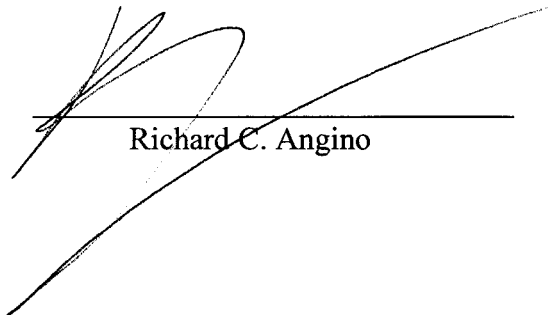
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Counsel for Paul Revere Life Insurance Company and New York Life Insurance
Company



Richard C. Angino

2/19/03